IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 13883 of 2006(C)

PETITIONER:

PUNNAKAN NARAYANAN, S/O. AMBU,
PUNNAKAN HOUSE, AZHIYIKKAL P.O., KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   DEPARTMENT OF GENERAL ADMINISTRATION,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR, KANNUR.**

3. **THE TAHSILDAR,**
   TALUK OFFICE, KANNUR.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.13883/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT DT. 18.11.85 IN OP. NO.6979/85.

EXT.P2:- COPY OF THE JUDGMENT DT. 27.3.96 IN OP. N.884/95.

EXT.P3:- COPY OF THE JUDGMENT DT. 17.3.04 IN OP. 14970/96.

EXT.P4:- COPY OF THE ORDER DT. 31.5.05 IN RP. NO.377/05.

EXT.P5:- COPY OF THE LETTER DT. 26.10.05 ISSUED BY THE TAHSILDAR, KANNUR ADDRESSED TO THE DISTRICT COLLECTOR, KANNUR.

EXT.P6:- COPY OF THE LETTER DT. 17.11.05 ISSUED BY THE DISTRICT COLLECTOR TO THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE LETTER DT. 6.1.06 ISSUED BY THE GOVERNMENT.

EXT.P8:- COPY OF THE REPRESENTATION DT. 5.4.06 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE ARTICLE TITLED " KAZHINJA KALA SAMBHAVANGAL" WRITTEN BY O.GOPALAN.

EXT.P10:- COPY OF THE PHOTO APPEARED IN A DAILY.

EXT.P11:- COPY OF THE NOTICE ISSUED BY THE NORTH KERALA SAHITHYA ACADEMY.

EXT.P12:- COPY OF THE ARTICLE APPEARDD IN SUDINAM DAILY.

EXT.P13:- COPY OF THE STATEMENT DT. 8.10.91 ISSUED BY KAVITHA SAHITHYA VEDI.

EXT.P14:- COPY OF THE WRITE UP DT. 1.4.93 BY O.GOPALAN.

EXT.P15:- COPY OF THE ARTICLE APPEARED IN SPODANAM EVENING DAILY DT. 4.12.86.

EXT.P16:- COPY OF THE NEW REPORT APPEARED IN MATHRUBHUMI DAILY DT. 10.8.96.

EXT.P17:- COPY OF THE NEWS ITEM IN SUDINAM DAILY.

/TRUE COPY/

P.A. TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.13883 of 2006-C.

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Dated this the 10th day of August, 2007.

J U D G M E N T

The petitioner herein has approached this Court aggrieved by the order passed by the Government produced as Ext.P7 rejecting his application for grant of pension under the Kerala Freedom Fighters Pension Scheme. There is a long history for this case. Earlier he had approached this Court by filing OP.No.6979/1985 challenging the orders rejecting grant of pension. As per Ext.P1 judgment the petitioner was given liberty to approach the authorities again with evidence sufficient to satisfy them about his eligibility. Subsequently, when the authorities again rejected his application he filed OP.No.884/1995 wherein this Court was pleased to direct the first respondent to take into consideration Ext.P7 therein and pass appropriate orders. Even thereafter he did not succeed in his efforts and again he filed OP.No.14970/1996 and that writ petition was dismissed by Ext.P3 judgment. Again the petitioner had filed a review petition which was disposed of by Ext.P4 order. In Ext.P4 it was made clear that in case the District Collector submits a favourable report to the Government, the Government will consider the case of the petitioner without discriminating him. The petitioner

again approached the District Collector, who after referring to the claim, forwarded Ext.P6 report to the Government. It is based on Ext.P6, Ext.P7 order has been passed.

2. In Ext.P7 after referring to the revised enquiry conducted by the District Collector the Government came to the conclusion that as the District Collector has not recommended his application it cannot be allowed. It was also found that on enquiry it is revealed that the petitioner had not undergone jail suffering.

3. Heard the learned counsel for both parties.

4. The learned counsel for the petitioner relying upon Exts.P9 to P17 contended that the role played by the petitioner in the freedom movement is evident from the contents of various articles as also press reports produced herein and therefore it is a genuine case where the petitioner being a bonafide freedom fighter ought to have been granted the pension. It is also submitted that the certifiers are well known freedom fighters and there were no circumstances to doubt the eligibility of them to issue the certificates.

5. In the judgment Ext.P2 this Court was pleased to find that the District Collector had recommended his application. But in Ext.P3 it was noticed that what was forwarded by the District Collector is a report and not a recommendation. It is accordingly the rejection of the application was

upheld. In the order Ext.P4 in the Review Petition OP.No.377/2005 the petitioner was given liberty to approach the District Collector again but it was made clear that in case the District Collector submits a favourable report to the Government, the Government will consider the case of the petitioner without discriminating him. It is thereafter Ext.P6 was forwarded by the District Collector to the Government. Ext.P5 is the report sent by the Tahsildar to the District Collector and the District Collector-in-charge submitted a report Ext.P6 before the Government. In Ext.P6 there is no recommendation by the District Collector on his application. But in Ext.P5 the Tahsildar had made mention of one aspect that even though there are no clear evidence to show the jail terms of the petitioner, etc; if persons who had gone underground sufferings are eligible for grant of pension then the petitioner also will eligible. But this was not obviously considered by the Government for granting pension.

6. The learned Government Pleader was directed to produce records leading to Ext.P6. The minutes book containing the proceedings of the District Advisory Committee has also been produced for perusal. The minutes show that the District Advisory Committee had considered his case and non-official members recorded their opinion that he is eligible even though he had not produced any valid documents in support of his suffering.

Relying upon the same, the learned counsel for the petitioner points out that the Government ought to have accepted the said recommendation. The learned Government Pleader points out that even though the non-official members had given such an opinion while forwarding the report, the District Collector has not recommended his application and going by Ext.P4 judgment unless there was a favourable recommendation the Government could not have granted the pension. I see much force in the submission. A perusal of the minutes book shows that the District Advisory Committee has also the opinion that there was no need to go underground in the Vyakthi Sathyagraha and the Quit India Movement. Of course it is an opinion of the Advisory Committee alone.

7. The learned counsel for the petitioner relying on certain historical aspects of freedom struggle submitted that the said opinion of the Advisory Committee is not correct and those were turbulent periods in the national freedom movement and it was also of an important fact that Second World War had started by that time. It is, therefore, submitted that this opinion of the Advisory Committee had tilted the case against the petitioner and if the petitioner is given a further opportunity to adduce more evidence before the District Collector he may be successful in proving his claim. As regards the jail records of the co-prisoners it is pointed out that the co-

prisoners are well known recipient of 'Thamrapatra', Sri.Manikkoth Kumaran was conferred with Thamrapatra and had undergone jail suffering during the freedom movement and therefore no further evidence regarding the co-prisoners had to be produced by the petitioner. The learned counsel for the petitioner relied on a decision reported in *Mammen v. State of Kerala* (1999(2) KLT 472) in this regard. It cannot be disputed that the certifier, if a holder of Thamrapatra the same had been conferred on proven jail suffering and other circumstances like punishment etc. In 1999(2) KLT 472 when the petitioner therein who was a holder of Thamrapatra was denied pension by the Central Government, this Court took the view that in such cases the authorities should not adopt technical view which will defeat the laudable scheme itself. Therefore, as far as the certifiers of the petitioner is concerned, there is no doubt that they were leading personalities in the freedom movement and the certificate issued by Sri.Manikkoth Kumaran shows that he had suffered actual imprisonment for more than five years during the freedom struggle and the details of the jails and the period has also been mentioned therein. Therefore, as regards the finding in Ext.P7 that jail records of certifiers have not been produced, I am of the view that the same cannot be put against the petitioner to reject his application as they have been granted/conferred honours by the Government in recognition of their valiant

record in public life and freedom movement.

8. Therefore, the view taken by the Government in Ext.P7 is upheld for other reasons. This will not prevent the petitioner from producing fresh materials before the District Collector and if such materials are produced this judgment will not be a bar for the authorities to consider his claim appropriately in the light of the observations made above.

The writ petition is disposed of as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-